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BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS

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Petition of United Parcel Service Co.
To Institute a Public Inquiry into
the Citizenship and Foreign Control
of DHL Airways, Inc.

Docket OST-2002-13089 -17

In re Compliance with U.S. Citizenship
Requirements of DHL Airways, Inc.

Third-Party Complaint

Docket OST-2002-13590 -6

**REPLY TO DHL AIRWAYS AND STATEMENT IN SUPPORT OF THE MOTIONS
FILED BY UNITED PARCEL SERVICE CO. AND FEDERAL EXPRESS CORPORATION**

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December 12, 2002

BEFORE THE
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WASHINGTON, D.C.

Petition of United Parcel Service Co.
To Institute a Public Inquiry into
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Docket OST-2002-13590

**REPLY TO DHL AIRWAYS AND STATEMENT IN SUPPORT OF THE MOTIONS
FILED BY UNITED PARCEL SERVICE CO. AND FEDERAL EXPRESS CORPORATION**

Lynden Air Cargo, LLC ("Lynden") joined the above captioned dockets, which request a public inquiry into the citizenship and foreign control of DHL Airways, because the ownership and control arrangements of DHL Airways give it an unfair competitive advantage over Lynden. It hereby replies to the Answer filed by DHL Airways. Lynden further supports the Motion to Defer filed by Federal Express Corporation ("FedEx") and the Motion to Amend filed by United Parcel Service Company ("UPS").¹

¹ See Motion for Leave to File an Otherwise Unauthorized Document and Amendment No. 2 to Petition of United Parcel Service Co., Docket OST-2002-13089, and Reply and Motion to Defer Action Pending Third-Party Complaint Proceeding, Docket OST-2002-13089, Docket OST-2002-13590, Docket OST-2002-13256, and Docket OST-2001-10052.

REPLY OF LYNDEN AIR CARGO, LLC

Lynden sought to join the above-captioned dockets, not to challenge the contract awarded by the Air Mobility Command ("AMC"), but to ferret out the impropriety of DHL Airways' undertaking to enter this market. DHL Airways has admitted that it acquired an aircraft specifically for the purpose of challenging the renewal of Lynden's contract to provide cargo lift for the U.S. military operating from Europe over routings within Europe and to the Middle East.² We are concerned that DHL Airways entered this market solely in an effort to create the appearance of independence from the DHL Network in order to address concerns about its citizenship.

The Department has disclosed in Congressional correspondence that it made recommendations to DHL Airways during the course of its informal review of that carriers' citizenship.³ It has not, however, disclosed what those recommendations were.

Lynden is very concerned about the Department's handling of this case. A carrier, like DHL Airways, that obtains over 90 percent of

² See Answer of DHL Airways to Motions of Lynden Air Cargo, at p.3-4 (Dec. 4, 2002).

³ See Letter of Assistant Secretary for Aviation and International Affairs to Honorable Jon D. Rockefeller IV dated May 7, 2002 (states that the reorganization plan was changed in response to DHL Airways' corporate needs and to the Department's recommendations), available at Docket OST-2002-13089-8.

REPLY OF LYNDEN AIR CARGO, LLC

its business from a so-called minority shareholder of that carrier, cannot in any realistic sense be considered "independent" of that shareholder. To conclude otherwise simply would defy commercial reality.

DHL Airways has offered no explanation as to either: (i) why it would acquire an aircraft specifically for the purpose of competing for Lynden's military contract in Germany; and (ii) the curious timing of it's decision to acquire an aircraft, which comes well after Lynden raised of it's concerns as to how DHL Airways planned to operate this military contract. DHL Airways' principal business is to provide lift to DHL Worldwide Express in the United States. In fact, third-party traffic cannot interfere with this business.⁴ The only logical explanation for DHL Airways' new interest in military contracts is its effort to create the appearance of independence from the DHL Network.

If DHL Airways has entered this market in response to any recommendation made by the Department, that alone would raise serious questions regarding the propriety of the Department's role in this case. Lynden therefore requests that this question be assigned specifically to an Administrative Law Judge for investigation and

⁴Letter from Senator John D. Rockefeller IV to Read Van de Water of 11/18/02 at 2.

REPLY OF LYNDEN AIR CARGO, LLC

resolution.

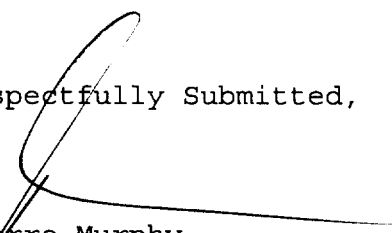
Lynden fully supports the Motion to Amend filed by UPS and the Motion filed by FedEx to defer action in Docket OST-2002-13089 pending resolution of DHL Airways' citizenship in Docket OST-2002-13590. As more clearly provided in both motions, serious questions regarding DHL Airways' credibility have become apparent. This evidence is not available to the Department in any other docket. Lynden believes it imperative the Department examine all of the available evidence to determine whether DHL Airways can satisfy its burden of proof that it is free from the foreign influence and control of the DHL network and its majority owner Deutsche Post. This evidence overwhelmingly supports the need for an ALJ to engage in a formal and public fact-finding analysis to resolve factual issues relevant to a determination of who owns and controls DHL Airways, and the nature of its relationship with the DHL network.

In conclusion, Lynden fully supports the Motions filed by United Parcel Service Co. and Federal Express Corporation. It respectfully requests the Department submit the issue of DHL Airways' citizenship to an Administrative Law Judge. It further requests that the Administrative Law Judge examine the question of whether DHL sought the AMC contract in response to recommendations

REPLY OF LYNDEN AIR CARGO, LLC

made, or concerns raised, by the Department or its staff in its review of DHL Airways' citizenship.

Respectfully Submitted,



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December 12, 2002

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Certificate of Service

I hereby certify that I have this 12th day of December, 2002 caused this Lynden Air Cargo Reply to DHL Airways and Statement in Support of the Motions filed by United Parcel Service Co. and Federal Express Corporation to be mailed to each party listed below by first-class mail, postage prepaid.

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